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THE VARIANCE STANDARD

(Applicant bears the Burden of Proof)

See NH RSA 674:33,I(b)

1. Granting the variance will **not** be **contrary to the public interest**.
2. Special conditions exist such that literal enforcement of the ordinance **will result in unnecessary hardship**.
 - A. Applicant seeking **use variance**—**Simplex** Analysis: (See Simplex Technologies v. Town of Newington, 145 NH 727)
 - i. The zoning restriction as applied to the property interferes with the landowner's reasonable use of the property, considering the unique setting of the property in its environment.
 - ii. No fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property; and,
 - iii. The variance would not injure the public or private rights of others.
 - B. Applicant seeking **area variance**—**Boccia** Analysis (See Michael Boccia v. City of Portsmouth, Supreme Court of NH, Opinion Issued May 25, 2004)
 - i. An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property.
 - ii. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.
3. Granting the variance is consistent with the **spirit of the ordinance**.
4. By granting the variance **substantial justice** will be done.
5. Granting the variance will **not diminish the values of surrounding properties**.